

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MB Docket No. 03-77 |
| Table of Allotments, |) | R M-10660 |
| FM Broadcast Stations. |) | |
| (Ashland, Coaling, Cordova, Decatur, Dora, |) | |
| Hackleburg, Hobson City, Holly Pond, |) | |
| Midfield, Sylacauga, and Tuscaloosa, |) | |
| Alabama and Atlanta, Georgia) |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: March 19, 2003

Released: March 21, 2003

Comment Date: May 12, 2003

Reply Comment Date: May 27, 2003

By the Assistant Chief, Audio Division:

I. The Audio Division has before it a Petition for Rule Making filed jointly by Cox Radio, Inc. and its wholly-owned subsidiary CXR Holdings, Inc. (collectively "Cox"). Cox **seeks** to amend the FM Table of Allotments by downgrading Channel **239C1**, Station WBHJ(FM), to Channel 239C2 and moving Station WBHJ from Tuscaloosa, Alabama, to Midfield, Alabama, as Midfield's first local aural transmission service.¹ To accommodate the foregoing proposed changes, Cox proposes to (a) reallocate Channel 238A, Station WFMH-FM, from Holly Pond, Alabama, to Hackleburg, Alabama, **as Hackleburg's first local service**; (b) to replace the local service at Holly Pond by reallocating Channel 245C, Station WRSA(FM), from Decatur, Alabama, to Holly Pond; (c) to reallocate Channel 237A, Station WFFN(FM), from Cordova, Alabama, to Coaling, Alabama, as Coaling's first local service; and (d) to replace the local service at Cordova by reallocating Channel 223A, Station WQOP-FM, from Dora, Alabama, to Cordova. Cox **has** obtained consents from the licensees of Stations WFMH-FM,¹ WRSA, WFFN, and WQOP-FM for the proposed facilities modifications of these stations and Cox pledges to reimburse the licensees for their reasonable **costs** in implementing the requested modifications. In addition, Cox proposes to reallocate Channel 238A, Station WASZ(FM), from Ashland, Alabama, to Hobson City, Alabama, as its first local FM and **first** nighttime service. To replace the sole local operating service at Ashland, Cox proposes to reallocate Channel 252A, Station WTRB-FM, from Sylacauga, Alabama, to Ashland. Finally, the reallocation of Channel 252A from Sylacauga to Ashland will require the reclassification of Channel **253C**, Station WSB-FM, Atlanta,

¹ CXR Holdings, Inc. is the licensee of Station WBHJ, Tuscaloosa, Alabama.

Williams Communications, Inc. **has** agreed to exercise its option to **purchase** Station WFMH-FM, Holly Pond, Alabama, upon grant of the instant petition for rulemaking **and**, in connection with its acquisition of this station, to apply to the Commission for authority to make the proposed modifications to this station.

Georgia, to Channel 253C0.³ Cox has obtained the consent of William Communications, Inc., the licensee of stations WASZ(FM) and WTRE-FM. for the proposed facilities modifications of these stations and Cox pledges to reimburse Williams Conununications. Lnc. for its reasonable costs in implementing the requested modifications.

1. The seven foregoing change of *community* proposals are filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁴ We observe that none of the proposed changes in community of license would result in the loss of the sole local aural transmission service to any community.

3. Cox asserts that the adoption of its change of community proposals for Stations WBHJ, WFMH-FM, and WFFN will result in a preferential arrangement of allotments consistent with *Community of License* and the *Revision of FM Assignment Policies and Procedure*⁵ by providing Midfield, Hackleburg, and Coaling, Alabama, with their first local aural transmission services. Midfield is an incorporated city with a 2000 U.S. Census population of 5,626 persons. Since it is located within the Birmingham Urbanized Area, and will encompass more than 78 percent of that urbanized area with its 70 dBu signal contour, Cox must present a *Tuck* showing that Midfield is sufficiently independent of the Birmingham Urbanized Area that Cox's proposal to relocate Station WBHJ to Midfield deserves credit for providing the first local service to Midfield." Cox has provided a *Tuck* analysis to demonstrate that Midfield is sufficiently independent of the Birmingham Urbanized Area to merit a first local service preference under priority (3) of the *FM Priorities*.

4. With respect to Cox's proposal to reallocate Channel 238A from Holly Pond to Hackleburg, Alabama, we observe that Hackleburg is an incorporated town⁶ with a 2000 U.S. Census population of 1,527. Cox states that Hackleburg has an elected mayor and a part-time five member city council, a fire department staffed by volunteers and a police department which has four full time paid staff. Cox asserts that Hackleburg levies taxes on its residents, provides them with water and septic services, and has its own post office and zip code. Further, Cox explains that Hackleburg has a number of local businesses, some of which identify themselves with the name of the town. In light of the foregoing, we find that Hackleburg is a community that is entitled to an FM allotment pursuant to Section 307(b) of the Communications Act of 1934, as amended. No service to an Urbanized Area is involved in this proposal. Although Cox's proposal to reallocate Channel 238A from Holly Pond to Hackleburg will provide a first local service to Hackleburg, we note that the proposal will create a net loss in FM radio service of 47,098 persons. Nevertheless, all of the

³ CXR Holdings, Inc. is the licensee of Station WSB-FM, Atlanta, Georgia, and has agreed to reclassify Station WSB-FM from Class C to Class C0.

⁴ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Community of License").

⁵ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("FM Priorities"). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

⁶ See *Huntington Broadcasting Co. v FCC*, 192 F.2d 33 (D.C. Cir 1951), *RKO General, Inc.*, 5 FCC Rcd 3212 (1990), and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("Tuck"). See also *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

See the 2000 Rand McNally Commercial Atlas and Marketing Guide

loss area is well served with five or more services and the gain area will provide a new service to 2,617 people currently receiving two services, 3,208 people currently receiving three services, and 9, 806 people currently receiving four services.

5. Cox's proposal to reallocate Channel 237A from Cordova to Coaling will provide Coaling with its first local aural transmission service and will result in a net gain of radio service to 60.211 people. The gain area is already well-served with five or more services, while the loss area will cause 730 people in a 29.5 square kilometer area to receive only three services and 190 people in a 10.5 square kilometer area to receive only four services. Since Coaling is not located in an Urbanized Area and the proposed 70 dBu contour for the Coaling proposal will cover only 37.1 percent of the Tuscaloosa, Alabama Urbanized Area, no *Tuck* showing is required to demonstrate that Cox's Coaling proposal merits a first local service preference under priority (3) of the *FM Priorities*.⁸ Coaling is an incorporated city with a 2000 U.S. Census population of 1,115. Cox explains that Coaling has a mayor, a part-time five member city council, and volunteer fire department staffed by twelve volunteers. Cox also notes that Coaling levies taxes on its residents, provides water services through its Water Authority Board, has its own post office and zip code, recently constructed a new town hall and a 1,300 square foot picnic pavilion, and is currently constructing two new youth baseball fields. In light of the foregoing, we find that Coaling is a community qualified to have an FM allotment pursuant to Section 307(b) of the Communications Act of 1934, as amended.

6. Cox's proposal to reallocate Channel 238A from Ashland to Hobson City, Alabama, will provide Hobson City with its first local FM service, first aural nighttime service, and second local aural transmission service and will result in a net gain of radio service to 80.595 people. Daytime-only AM Station WHOG is the only service currently assigned to Hobson City. Since Hobson City already has a local AM service, the Commission has previously determined that Hobson City is a community meriting its own local radio service. Hobson City is an incorporated community with a 2000 U.S. Census population of 878. As noted earlier, Cox proposes to reallocate Channel 238A from Ashland to Hobson City and to replace the loss of the sole operating service at Ashland by reallocating Channel 252A from Sylacauga to Ashland. Sylacauga, with a 2000 U.S. Census population of 12,616, will continue to receive local service from two fulltime AM stations. We request specific comment concerning the removal of local FM service from the larger community of Sylacauga and the addition of a new local FM service to Hobson City under priority 4 of the *FM Priorities*. Hobson City is located in the Anniston, Alabama, Urbanized Area, but does not require a *Huntington/Tuck* analysis⁹ because this analysis only applies to petitioners seeking a first local service preference.¹⁰ Cox proposes a second local service at Hobson City.

7. Since Cox's change of community proposals are consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorizations of Stations WBHI, WFMH-FM, WRSA, WFFN, WQOP-FM, WASZ, and WTRB-FM without entertaining competing expressions of interest in the use of Channel 239C2 at Midfield, the use of Channel 238A at Hackleburg, the use of Channel 245C at Holly Pond, the use of Channel 237A at Coaling, the use of Channel 223A at Cordova, the use of Channel 238A at Hobson City, or the use of Channel 252A at Ashland, or require Cox to demonstrate the availability of additional equivalent class channels for use by other parties.

⁸ See paragraph 3, *supra*.

⁹ See footnote 6, *supra*.

¹⁰ See, e.g., *Tullahoma, Tennessee, and Madison Alabama*, 15 FCC Rcd 6189, 6190 (MM Bur. 2000); *Lockport and Amherst, New York*, 14 FCC Rcd 15438, 15440 (MM Bur. 1999); *Tuck*, 3 FCC Rcd 5374 (1988).

8. Consistent with the technical requirements of the Commission's Rules, Channel 239C2 can be allotted to Midfield, Alabama, utilizing coordinates of 33-24-50 NL and 87-01-05 WL, with a site restriction of 11.4 kilometers (7.1 miles) southwest of Midfield; Channel 238A can be allotted to Hackleburg, Alabama, utilizing coordinates of 34-13-15 NL and 87-45-00 WL, with a site restriction of 9.5 kilometers (5.9 miles) southeast of Hackleburg; Channel 245C can be allotted to Holly Pond, Alabama, utilizing coordinates of 34-29-23 NL and 86-37-38 WL, with a site restriction of 35.1 kilometers (21.8 miles) north of Holly Pond; Channel 237A can be allotted to Coaling, Alabama, utilizing coordinates of 33-04-58 NL and 87-27-02 WL, with a site restriction of 13.4 kilometers (8.3 miles) southwest of Coaling; Channel **223A** can be allotted to Cordova, Alabama, utilizing coordinates of 33-38-55 NL and 87-09-19 WL, with a site restriction of 12.4 kilometers (7.7 miles) south of Cordova; Channel 238A can be allotted to Hobson City, Alabama, utilizing coordinates of 33-29-30 NL and 85-52-55 WL, with a site restriction of 14.8 kilometers (9.2 miles) south of Hobson City; and Channel 252A can be allotted to Ashland, Alabama, utilizing coordinates of 33-15-45 NL and 85-54-00 WL, with a site restriction of 6.1 kilometers (3.8 miles) west of Ashland, Alabama.

9. Accordingly, we seek comments on the foregoing proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

| <u>City</u> | <u>Channel Nos.</u> | |
|----------------------|---|--|
| | <u>Present</u> | <u>Proposed</u> |
| Ashland, Alabama | 238A, 264A | 252A, 264A |
| Coaling, Alabama | ----- | 237A |
| Cordova, Alabama | 237A | 223A |
| Decatur, Alabama | 245C, 271C1 | 271C1 |
| Dora, Alabama | 223A | ----- |
| Hackleburg, Alabama | ----- | 238A |
| Hobson City, Alabama | ----- | 238A |
| Holly Pond, Alabama | 238A | 245C |
| Midfield, Alabama | ----- | 239C2 |
| Sylacauga, Alabama | 252A | ----- |
| Tuscaloosa, Alabama | 225C1, 239C1, 288A | 225C1, 288A |
| Atlanta, Georgia | 225C1, 235C1, 241C, 253C, 259C, 277C | 225C1, 235C1, 241C, 253C0, 259C, 277C |

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 12, 2003, and reply comments on or before May 27, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Cox's counsel, as follows:

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Elizabeth A. M. McFadden, Esq.
Nam E. Kim, Esq.
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12. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments. Section 73.202(b) of the Commission's Rules."

14. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 518-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence

¹¹ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do No Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new **oral** information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an **ex parte** presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Conuncnts are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to **file** comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.418 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by notification of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be ~~filed~~ with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, **SW**, Washington, D.C.